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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	:	Before the Examiner:
Philippe Damon et al.	:	Cao, Diem K.
Serial No.: 09/675,545	:	Group Art Unit: 2126
Filed: September 28, 2000	:	
Title: AN EFFICIENT TIMER	:	IBM Corporation
MANAGEMENT SYSTEM	:	P.O. Box 12915
	:	Dept. 9CCA, Bldg. 002
	:	Research Triangle Park, NC 27709

SUPPLEMENTAL APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This brief is being submitted pursuant to 37 C.F.R. §1.193(b)(2)(ii). Appellants are furnishing herewith three (3) copies of this brief.

CERTIFICATION UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on April 14, 2004.

Signature

Serena Beller

(Printed name of person certifying)

I. INCORPORATION BY REFERENCE

The Appellant hereby incorporates herein by reference Sections I-V and VIII-IX of Appellants' Brief mailed on November 25, 2003.

II. ISSUE

A. Are claims 1 and 19 properly rejected under 35 U.S.C. §103(a) as being unpatentable over Appellants' Background in view of Russell (U.S. Patent No. 6,349,388) in further view of Cook (U.S. Patent No. 5,621,892)?

B. Are claims 2-3 properly rejected under 35 U.S.C. §103(a) as being unpatentable over Appellants' Background in view of Russell and Cook and in further view of Dorn et al. (U.S. Patent No. 6,012,081) (hereinafter "Dorn")?

C. Are claims 1 and 19 properly rejected under 35 U.S.C. §103(a) as being unpatentable over Appellants' Background in view of Russell in further view of Kampe (U.S. Patent No. 6,618,805)?

D. Are claims 2-3 properly rejected under 35 U.S.C. §103(a) as being unpatentable over Appellants' Background in view of Russell and Kampe and in further view of Dorn?

III. GROUPING OF CLAIMS

Claims 1, 2, 3 and 19 should not be grouped together and should be considered separately.

The reasons for these groupings are set forth below in Appellant's arguments in Section IV.

IV. ADDITIONAL ARGUMENTS

- A. Claims 1 and 19 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Appellants' Background in view of Russell and in further view of Cook.

The Examiner has rejected claims 1 and 19 as being unpatentable over Appellants' Background in view of Russell and in further view of Cook. Paper No. 12, page 3. Appellants respectfully traverse for at least the reasons stated below.

A *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular and supported by objective evidence. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner's motivation for modifying Appellants' Background with Russell to have a timer database for storing timer-related information and a timer services detecting the expiring of a timer, as recited in claim 1, is to "provide[s] a scalable approach to supporting an arbitrarily number of timers and reduce[s] the typical processor overhead and hardware overhead involved in managing timers (col. 2, lines 27-31)." Paper No. 12, pages 3-4. The Examiner's motivation for modifying Appellants' Background with Russell and Cook to have a handle function that allows an application to act on an expired timer without incurring an illegal time-out message, as recited in claim 1, is to "provide[s] a method for managing events in the system." Paper No. 12, page 4. The Examiner's motivation for modifying

Appellants' Background with Russell and Cook to have an application program interface that is a DLL file, as recited in claim 19, is "because utilizing DLL improve[s] the performance of the system because a DLL can be used by several programs at the same time." Paper No. 12, page 4. These motivations are insufficient to support a *prima facie* case of obviousness as discussed below.

Appellants' Background teaches a timer management program for managing a plurality of timers. Specification, page 2, lines 6-7.

Russell, on the other hand, teaches a timer processing engine that supports multiple virtual minimum time timers. Column 1, lines 50-65; Column 2, lines 27-32.

Cook, on the other hand, teaches that it is desirable to have a flexible event manager that can easily be reconfigured for handling new events if new hardware or software functionality is added to the computer. Column 1, lines 60-64.

The Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Appellants' Background to provide a scalable approach to supporting an arbitrarily number of timers and reduce the typical processor overhead and hardware overhead involved in managing timers (Examiner's motivation). *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). The Examiner's motivation appears to have been gleaned from the secondary reference (Russell). In fact, the Examiner cites column 2, lines 27-31 of Russell as support for his motivation. Paper No. 12, page 4. This is not evidence as to why one of ordinary skill in the art with the primary reference (Appellants' Background) in front of him would have been motivated to modify the primary reference (Appellants' Background) with the teachings of the secondary reference (Russell). The Examiner's motivation is a motivation for the secondary reference (Russell) to solve its problem. This is not a suggestion to combine the primary reference (Appellants' Background)

with the secondary reference (Russell). As stated above, the primary reference (Appellants' Background) teaches a timer management program for managing a plurality of timers. The Examiner must provide evidence as to why one of ordinary skill in the art with the primary reference (Appellants' Background) in front of him, which teaches a timer management program for managing a plurality of timers, would have been motivated to modify the primary reference (Appellants' Background) with the teachings of the secondary reference (Russell), which teaches a timer processing engine that supports multiple virtual minimum time timers. *See In re Lee*, 61 U.S.P.Q.2d 1430, 1433-1434 (Fed. Cir. 2002); *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000). Merely stating what the secondary reference teaches is not evidence for combining a primary reference (Appellants' Background) with the secondary reference (Russell). *See Id.* Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 1 and 19. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

Further, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of combining Appellants' Background, which teaches a timer management program for managing a plurality of timers, with Russell, which teaches a timer processing engine that supports multiple virtual minimum time timers. *Id.* There is no suggestion in Appellants' Background of a timer processing engine that supports multiple virtual minimum time timers. Since the Examiner has not submitted objective evidence for modifying Appellants' Background with Russell, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 1 and 19. *Id.*

Further, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Appellants' Background to have a timer database for storing timer-related information and a timer services detecting the

expiring of a timer. *Id.* There is no suggestion in Appellants' Background of having a timer database for storing timer-related information. Neither is there any suggestion in Appellants' Background of having a timer services detecting the expiring of a timer. Since the Examiner has not submitted objective evidence for modifying Appellants' Background to have a timer database for storing timer-related information and a timer services detecting the expiring of a timer, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 1 and 19. *Id.*

Further, the motivation provided by the Examiner (provide Appellants' Background a method for managing events in the system) is not a motivation as to why one of ordinary skill in the art with a primary reference (Appellants' Background) in front of him would have been motivated to modify the teachings of the primary reference (Appellants' Background) with the teachings of the secondary references (Russell and Cook). As stated above, the primary reference (Appellants' Background) teaches a timer management program for managing a plurality of timers. The Examiner must provide objective evidence as to why one of ordinary skill in the art with the primary reference (Appellants' Background) in front of him, which teaches a timer management program for managing a plurality of timers, would be modified with a secondary reference (Cook), which teaches a flexible event manager that can easily be reconfigured for handling new events if new hardware or software functionality is added to the computer. *See In re Lee*, 61 U.S.P.Q.2d 1430, 1433-1434 (Fed. Cir. 2002); *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000). Merely stating to "provide Appellants' Background a method for managing events in the system" does not address as to why one of ordinary skill in the art with primary reference (Appellants' Background) in front of him would specifically modify the primary reference (Appellants' Background) with one of the secondary references (Cook). There is no suggestion in Appellants' Background of reconfiguring a flexible event manager. Neither is there any suggestion in Appellants' Background for reconfiguring a flexible event manager to handle new events if new hardware or

software functionality is added to the computer. Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 1 and 19. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

Further, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Appellants' Background to have a handle function that allows an application to act on an expired timer without incurring an illegal time-out message. *Id.* There is no suggestion in Appellants' Background of having a handle function. Neither is there any suggestion in Appellants' Background of having a handle function that allows an application to act on an expired timer without incurring an illegal time-out message. Since the Examiner has not submitted objective evidence for modifying Appellants' Background to have a handle function that allows an application to act on an expired timer without incurring an illegal time-out message, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 1 and 19. *Id.*

Further, the motivation provided by the Examiner (because utilizing DLL improve[s] the performance of the system because a DLL can be used by several programs at the same time) is not a motivation as to why one of ordinary skill in the art with a primary reference (Appellants' Background) in front of him would have been motivated to modify the teachings of the primary reference (Appellants' Background) with the teachings of the secondary references (Russell and Cook). As stated above, the primary reference (Appellants' Background) teaches a timer management program for managing a plurality of timers. The Examiner must provide objective evidence as to why one of ordinary skill in the art with the primary reference (Appellants' Background) in front of him, which teaches a timer management program for managing a plurality of timers, would be modified with a secondary reference (Cook), which teaches a flexible event manager that can easily be reconfigured for handling new events if new hardware or software functionality is

added to the computer. See *In re Lee*, 61 U.S.P.Q.2d 1430, 1433-1434 (Fed. Cir. 2002); *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000). Merely stating to "because utilizing DLL improve[s] the performance of the system because a DLL can be used by several programs at the same time" does not address as to why one of ordinary skill in the art with primary reference (Appellants' Background) in front of him would specifically modify the primary reference (Appellants' Background) with one of the secondary references (Cook). As stated above, there is no suggestion in Appellants' Background of reconfiguring a flexible event manager. Neither is there any suggestion in Appellants' Background for reconfiguring a flexible event manager to handle new events if new hardware or software functionality is added to the computer. Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claim 19. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

Further, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Appellants' Background to have an application program interface that is a DLL file. *Id.* There is no suggestion in Appellants' Background of having an application program interface that is a DLL file. Since the Examiner has not submitted objective evidence for modifying Appellants' Background to have an application program interface that is a DLL file, the Examiner has not presented a *prima facie* case of obviousness for rejecting claim 19.

As a result of the foregoing, Appellants respectfully assert that the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 1 and 19. M.P.E.P. § 2143.

- B. Claims 2 and 3 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Appellants' Background in view of Russell and Cook and in further view of Dorn.

The Examiner has rejected claims 2 and 3 as being unpatentable over Appellants' Background in view of Russell and Cook and in further view of Dorn.

Paper No. 12, page 3. Appellants respectfully traverse for at least the reasons stated below.

1. The Examiner has not presented any objective evidence for combining Appellants' Background with Russell, Cook and Dorn.

As stated above, a *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular and supported by objective evidence. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner's motivation for modifying Appellants' Background with Russell, Cook and Dorn to have an application that performs the following operations on a timer via an API: creating a timer from an allocated block of system memory; activating the timer; and reinitializing the timer using the allocated block of system memory, as recited in claim 2, is "because it provides a service and event synchronous/asynchronous system." Paper No. 12, page 5. Further, the Examiner's motivation for modifying Appellants' Background with Russell, Cook and Dorn to have an application that performs the following operations on a timer via an API: creating a timer from an allocated block of system memory; activating the timer; and wherein the timer expires and the timer services sends synchronously a time-out message to the application where the time-out message is sent using the allocated block of memory used to create the timer, as recited in claim 3, is "because it provides

a service and event synchronous/asynchronous system." Paper No. 12, page 6. These motivations are insufficient to support a *prima facie* case of obviousness as discussed below.

As stated above, Appellants' Background teaches a timer management program for managing a plurality of timers. Specification, page 2, lines 6-7.

As stated above, Russell, on the other hand, teaches a timer processing engine that supports multiple virtual minimum time timers. Column 1, lines 50-65; Column 2, lines 27-32.

As stated above, Cook, on the other hand, teaches that it is desirable to have a flexible event manager that can easily be reconfigured for handling new events if new hardware or software functionality is added to the computer. Column 1, lines 60-64.

Dorn, on the other hand, teaches threading control. Column 1, lines 5-7; Column 2, lines 50-57.

The Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Appellants' Background "because it provides a service and event synchronous/asynchronous system" (Examiner's motivation). *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). The Examiner's motivation appears to have been gleaned from a secondary reference (Dorn). The Examiner's motivation appears to have been gleaned from the Abstract of the secondary reference. *See* Abstract of Dorn. This is not evidence as to why one of ordinary skill in the art with the primary reference (Appellants' Background) in front of him would have been motivated to modify the primary reference (Appellants' Background) with the teachings of a secondary reference (Dorn). The Examiner's motivation is a motivation for the secondary reference (Dorn) to solve its problem. This is not a suggestion to combine the primary reference (Appellants' Background)

with the secondary references (Russell, Cook and Dorn). As stated above, the primary reference (Appellants' Background) teaches a timer management program for managing a plurality of timers. The Examiner must provide evidence as to why one of ordinary skill in the art with the primary reference (Appellants' Background) in front of him, which teaches a timer management program for managing a plurality of timers, would have been motivated to modify the primary reference (Appellants' Background) with the teachings of a secondary reference (Russell), which teaches a timer processing engine that supports multiple virtual minimum time timers, with the teachings of the other secondary reference (Cook), which teaches a flexible event manager that can easily be reconfigured for handling new events if new hardware or software functionality is added to the computer, with the teachings of the other secondary reference (Dorn), which teaches threading control. *See In re Lee*, 61 U.S.P.Q.2d 1430, 1433-1434 (Fed. Cir. 2002); *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000). Merely stating what a secondary reference teaches is not evidence for combining a primary reference (Appellants' Background) with the secondary references (Russell, Cook and Dorn). *See Id.* Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 2-3. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

Further, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Appellants' Background to have an application that performs the following operations on a timer via an API: creating a timer from an allocated block of system memory; activating the timer; and reinitializing the timer using the allocated block of system memory. *Id.* There is no suggestion in Appellants' Background of creating a timer from an allocated block of system memory. Neither is there any suggestion in Appellants' Background of activating the timer. Neither is there any suggestion in Appellants' Background reinitializing the timer using the allocated block of system memory. Since the

Examiner has not submitted objective evidence for modifying Appellants' Background to have an application that performs the following operations on a timer via an API: creating a timer from an allocated block of system memory; activating the timer; and reinitializing the timer using the allocated block of system memory, the Examiner has not presented a *prima facie* case of obviousness for rejecting claim 2. *Id.*

Further, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Appellants' Background to have an application that performs the following operations on a timer via an API: creating a timer from an allocated block of system memory; activating the timer; and wherein the timer expires and the timer services sends synchronously a time-out message to the application where the time-out message is sent using the allocated block of memory used to create the timer. *Id.* There is no suggestion in Appellants' Background of creating a timer from an allocated block of system memory. Neither is there any suggestion in Appellants' Background of activating the timer. Neither is there any suggestion in Appellants' Background of sending synchronously a time-out message to an application when a timer expires where the time-out message is sent using the block of memory allocated to create the timer. Since the Examiner has not submitted objective evidence for modifying Appellants' Background to have an application that performs the following operations on a timer via an API: creating a timer from an allocated block of system memory; activating the timer; and wherein the timer expires and the timer services sends synchronously a time-out message to the application where the time-out message is sent using the allocated block of memory used to create the timer, the Examiner has not presented a *prima facie* case of obviousness for rejecting claim 3. *Id.*

As a result of the foregoing, Appellants respectfully assert that the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 2-3. M.P.E.P. § 2143.

2. Appellants' Background, Russell, Cook and Dorn, taken singly or in combination do not teach or suggest the following claim limitations.

Appellants respectfully assert that Appellants' Background, Russell, Cook and Dorn, taken singly or in combination, do not teach or suggest "wherein said application performs the following operations on said timer via said API: creating said timer from an allocated block of said memory; activating said timer" as recited in claim 2 and similarly in claim 3. The Examiner cites column 8, lines 41-64, column 13, line 55 – column 15, line 12 of Dorn as teaching the above-identified limitations. Paper No. 12, page 5. Appellants respectfully traverse and assert that Dorn instead teaches timer slots to handle synchronous and asynchronous timers. The Examiner must provide a basis in fact and/or technical reasoning to support the assertion that timer slots of Dorn teach creating a timer from an allocated block of said memory. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). As the Examiner has not provided any objective evidence in support of the assertion that timer slots of Dorn teach creating a timer from an allocated block of said memory, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 2 and 3. M.P.E.P. § 2143.

Appellants further assert that Appellants' Background, Russell, Cook and Dorn, taken singly or in combination, do not teach or suggest "reinitiating said timer using said allocated block of system memory" as recited in claim 2. The Examiner states that Dorn does not teach the above-cited claim limitation. Paper No. 12, page 5. However, the Examiner continues by asserting that Dorn teaches that the slot is reusable. Paper No. 12, page 5. Appellants assume that the Examiner is asserting

that since Dorn allegedly teaches that the slot is reusable that Dorn teaches reinitiating a timer using the allocated block of system memory used to create a timer. Appellants respectfully traverse such an assertion. The Examiner must provide a basis in fact and/or technical reasoning to support the assertion that reusable slots in Dorn teach reinitiating a timer using the allocated block of system memory used to create a timer. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). As the Examiner has not provided any objective evidence in support of the assertion that reusable slots in Dorn teach reinitiating a timer using the allocated block of system memory used to create a timer, the Examiner has not presented a *prima facie* case of obviousness for rejecting claim 2. M.P.E.P. § 2143.

Appellants further assert that Appellants' Background, Russell, Cook and Dorn, taken singly or in combination, do not teach or suggest "wherein said timer expires and said timer services sends synchronously a time-out message to said application, wherein said time-out message is sent using said allocated block of system memory" as recited in claim 3. The Examiner cites column 14, lines 17-28 of Dorn as teaching a time-out message sent using the block of system memory allocated in creating the timer. Paper No. 12, page 5. Appellants respectfully traverse and assert that Dorn instead teaches that a timer will be instantiated by supplying a time after which it should expire and a callback function to be invoked upon timer expiration. Dorn further teaches that when the timer expires, it notifies the specified dispatcher to invoke the callback. While Dorn teaches notifying a dispatcher to invoke a callback upon expiration of the timer, there is no language in the cited passage that teaches sending a time-out message that uses the block of system memory allocated in creating the timer. Therefore, the Examiner has not presented a *prima facie* case of obviousness since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d. 1453, 1455 (Fed. Cir. 1998).

As a result of the foregoing, Appellants respectfully assert that there are numerous claim limitations not taught or suggested in the cited prior art, and thus the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 2-3 as being unpatentable over Appellants' Background in view of Russell and Cook and in further view of Dorn. M.P.E.P. § 2143.

- C. Claims 1 and 19 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Appellants' Background in view of Russell and in further view of Kampe.

The Examiner has rejected claims 1 and 19 as being unpatentable over Appellants' Background in view of Russell and in further view of Kampe. Paper No. 12, page 6. Appellants respectfully traverse for at least the reasons stated below.

As stated above, a *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular and supported by objective evidence. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d. 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner's motivation for modifying Appellants' Background with Russell to have a timer database for storing timer-related information and a timer services detecting the expiring of a timer, as recited in claim 1, is to "provide[s] a scalable approach to supporting an arbitrarily number of timers and reduce[s] the typical processor overhead and hardware overhead involved in managing timers (col. 2, lines 27-31)." Paper No. 12, page 7. The Examiner's motivation for modifying

Appellants' Background with Russell and Kampe to have a handle function that allows an application to act on an expired timer without incurring an illegal time-out message, as recited in claim 1, is to "provide[s] a method to avoid unnecessary or ineffective error messages." Paper No. 12, page 7. The Examiner's motivation for modifying Appellants' Background with Russell and Kampe to have an application program interface that is a DLL file, as recited in claim 19, is "because utilizing DLL improve[s] the performance of the system because a DLL can be used by several programs at the same time." Paper No. 12, page 7. These motivations are insufficient to support a *prima facie* case of obviousness as discussed below.

Appellants' Background teaches a timer management program for managing a plurality of timers. Specification, page 2, lines 6-7.

Russell, on the other hand, teaches a timer processing engine that supports multiple virtual minimum time timers. Column 1, lines 50-65; Column 2, lines 27-32.

Kampe, on the other hand, teaches managing upgrades in a high availability computer system by viewing the upgrade process as driving the system between a succession of stable configurations. Abstract.

As stated above, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Appellants' Background to provide a scalable approach to supporting an arbitrarily number of timers and reduce the typical processor overhead and hardware overhead involved in managing timers (Examiner's motivation). *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). The Examiner's motivation appears to have been gleaned from the secondary reference (Russell). In fact, the Examiner cites column 2, lines 27-31 of Russell as support for his motivation. Paper No. 12, page 4. This is not evidence as to why one of ordinary skill in the art with the primary reference (Appellants' Background) in front of him

would have been motivated to modify the primary reference (Appellants' Background) with the teachings of the secondary reference (Russell). The Examiner's motivation is a motivation for the secondary reference (Russell) to solve its problem. This is not a suggestion to combine the primary reference (Appellants' Background) with the secondary reference (Russell). As stated above, the primary reference (Appellants' Background) teaches a timer management program for managing a plurality of timers. The Examiner must provide evidence as to why one of ordinary skill in the art with the primary reference (Appellants' Background) in front of him, which teaches a timer management program for managing a plurality of timers, would have been motivated to modify the primary reference (Appellants' Background) with the teachings of the secondary reference (Russell), which teaches a timer processing engine that supports multiple virtual minimum time timers. *See In re Lee*, 61 U.S.P.Q.2d 1430, 1433-1434 (Fed. Cir. 2002); *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000). Merely stating what the secondary reference teaches is not evidence for combining a primary reference (Appellants' Background) with the secondary reference (Russell). *See Id.* Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 1 and 19. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

Further, as stated above, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of combining Appellants' Background, which teaches a timer management program for managing a plurality of timers, with Russell, which teaches a timer processing engine that supports multiple virtual minimum time timers. *Id.* There is no suggestion in Appellants' Background of a timer processing engine that supports multiple virtual minimum time timers. Since the Examiner has not submitted objective evidence for modifying Appellants' Background with Russell, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 1 and 19. *Id.*

Further, as stated above, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Appellants' Background to have a timer database for storing timer-related information and a timer services detecting the expiring of a timer. *Id.* There is no suggestion in Appellants' Background of having a timer database for storing timer-related information. Neither is there any suggestion in Appellants' Background of having a timer services detecting the expiring of a timer. Since the Examiner has not submitted objective evidence for modifying Appellants' Background to have a timer database for storing timer-related information and a timer services detecting the expiring of a timer, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 1 and 19. *Id.*

Further, the motivation provided by the Examiner (provide Appellants' Background a method to avoid unnecessary or ineffective error messages) is not a motivation as to why one of ordinary skill in the art with a primary reference (Appellants' Background) in front of him would have been motivated to modify the teachings of the primary reference (Appellants' Background) with the teachings of the secondary references (Russell and Kampe). As stated above, the primary reference (Appellants' Background) teaches a timer management program for managing a plurality of timers. The Examiner must provide objective evidence as to why one of ordinary skill in the art with the primary reference (Appellants' Background) in front of him, which teaches a timer management program for managing a plurality of timers, would be modified with a secondary reference (Kampe), which teaches managing upgrades in a high availability computer system by viewing the upgrade process as driving the system between a succession of stable configurations. *See In re Lee*, 61 U.S.P.Q.2d 1430, 1433-1434 (Fed. Cir. 2002); *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000). Merely stating to "provide Appellants' Background a method to avoid unnecessary or ineffective error messages" does not address as to why one of ordinary skill in the art with primary reference (Appellants' Background)

in front of him would specifically modify the primary reference (Appellants' Background) with one of the secondary references (Kampe). There is no suggestion in Appellants' Background of managing upgrades. Neither is there any suggestion in Appellants' Background of managing upgrades in a high availability computer system. Neither is there any suggestion in Appellants' Background of managing upgrades in a high availability computer system by viewing the upgrade process as driving the system between a succession of stable configurations. Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 1 and 19. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

Further, as stated above, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Appellants' Background to have a handle function that allows an application to act on an expired timer without incurring an illegal time-out message. *Id.* There is no suggestion in Appellants' Background of having a handle function. Neither is there any suggestion in Appellants' Background of having a handle function that allows an application to act on an expired timer without incurring an illegal time-out message. Since the Examiner has not submitted objective evidence for modifying Appellants' Background to have a handle function that allows an application to act on an expired timer without incurring an illegal time-out message, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 1 and 19. *Id.*

Further, as stated above, the motivation provided by the Examiner (because utilizing DLL improve[s] the performance of the system because a DLL can be used by several programs at the same time) is not a motivation as to why one of ordinary skill in the art with a primary reference (Appellants' Background) in front of him would have been motivated to modify the teachings of the primary reference (Appellants' Background) with the teachings of the secondary references (Russell and Kampe). As stated above, the primary reference (Appellants' Background) teaches a

timer management program for managing a plurality of timers. The Examiner must provide objective evidence as to why one of ordinary skill in the art with the primary reference (Appellants' Background) in front of him, which teaches a timer management program for managing a plurality of timers, would be modified with a secondary reference (Kampe), which teaches managing upgrades in a high availability computer system by viewing the upgrade process as driving the system between a succession of stable configurations. See *In re Lee*, 61 U.S.P.Q.2d 1430, 1433-1434 (Fed. Cir. 2002); *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000). Merely stating "because utilizing DLL improve[s] the performance of the system because a DLL can be used by several programs at the same time" does not address as to why one of ordinary skill in the art with primary reference (Appellants' Background) in front of him would specifically modify the primary reference (Appellants' Background) with one of the secondary references (Kampe). As stated above, there is no suggestion in Appellants' Background of managing upgrades. Neither is there any suggestion in Appellants' Background of managing upgrades in a high availability computer system. Neither is there any suggestion in Appellants' Background of managing upgrades in a high availability computer system by viewing the upgrade process as driving the system between a succession of stable configurations. Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claim 19. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

Further, as stated above, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Appellants' Background to have an application program interface that is a DLL file. *Id.* There is no suggestion in Appellants' Background of having an application program interface that is a DLL file. Since the Examiner has not submitted objective evidence for modifying Appellants' Background to have an application program interface that is a

DLL file, the Examiner has not presented a *prima facie* case of obviousness for rejecting claim 19.

As a result of the foregoing, Appellants respectfully assert that the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 1 and 19. M.P.E.P. § 2143.

- D. Claims 2 and 3 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Appellants' Background in view of Russell and Kampe and in further view of Dorn.

The Examiner has rejected claims 2 and 3 as being unpatentable over Appellants' Background in view of Russell and Kampe and in further view of Dorn. Paper No. 12, page 7. Appellants respectfully traverse for at least the reasons stated below.

1. The Examiner has not presented any objective evidence for combining Appellants' Background with Russell, Kampe and Dorn.

As stated above, a *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular and supported by objective evidence. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d. 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner's motivation for modifying Appellants' Background with Russell, Kampe and Dorn to have an application that performs the following

operations on a timer via an API: creating a timer from an allocated block of system memory; activating the timer; and reinitializing the timer using the allocated block of system memory, as recited in claim 2, is "because it provides the programmers not to bother with the low level details." Paper No. 12, page 8. Further, the Examiner's motivation for modifying Appellants' Background with Russell, Kampe and Dorn to have an application that performs the following operations on a timer via an API: creating a timer from an allocated block of system memory; activating the timer; and wherein the timer expires and the timer services sends synchronously a time-out message to the application where the time-out message is sent using the allocated block of memory used to create the timer, as recited in claim 3, is "because it provides a service and event synchronous/asynchronous system." Paper No. 12, page 9. These motivations are insufficient to support a *prima facie* case of obviousness as discussed below.

As stated above, Appellants' Background teaches a timer management program for managing a plurality of timers. Specification, page 2, lines 6-7.

As stated above, Russell, on the other hand, teaches a timer processing engine that supports multiple virtual minimum time timers. Column 1, lines 50-65; Column 2, lines 27-32.

As stated above, Kampe, on the other hand, teaches managing upgrades in a high availability computer system by viewing the upgrade process as driving the system between a succession of stable configurations. Abstract.

As stated above, Dorn, on the other hand, teaches threading control. Column 1, lines 5-7; Column 2, lines 50-57.

The motivation provided by the Examiner (because it provides the programmers not to bother with the low level details) is not a motivation as to why

one of ordinary skill in the art with a primary reference (Appellants' Background) in front of him would have been motivated to modify the teachings of the primary reference (Appellants' Background) with the teachings of the secondary references (Russell, Kampe and Dorn). As stated above, the primary reference (Appellants' Background) teaches a timer management program for managing a plurality of timers. The Examiner must provide objective evidence as to why one of ordinary skill in the art with the primary reference (Appellants' Background) in front of him, which teaches a timer management program for managing a plurality of timers, would be modified with a secondary reference (Dorn), which teaches threading control. *See In re Lee*, 61 U.S.P.Q.2d 1430, 1433-1434 (Fed. Cir. 2002); *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000). Merely stating "because it provides the programmers not to bother with the low level details" does not address as to why one of ordinary skill in the art with primary reference (Appellants' Background) in front of him would specifically modify the primary reference (Appellants' Background) with one of the secondary references (Dorn). As stated above, there is no suggestion in Appellants' Background of threading control. Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claim 2. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

Further, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Appellants' Background "because it provides a service and event synchronous/asynchronous system" (Examiner's motivation). *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). The Examiner's motivation appears to have been gleaned from a secondary reference (Dorn). The Examiner's motivation appears to have been gleaned from the Abstract of the secondary reference. *See* Abstract of Dorn. This is not evidence as to why one of ordinary skill in the art with the primary reference (Appellants' Background) in front of him would have been motivated to modify the primary reference (Appellants'

Background) with the teachings of a secondary reference (Dorn). The Examiner's motivation is a motivation for the secondary reference (Dorn) to solve its problem. This is not a suggestion to combine the primary reference (Appellants' Background) with the secondary references (Russell, Kampe and Dorn). As stated above, the primary reference (Appellants' Background) teaches a timer management program for managing a plurality of timers. The Examiner must provide evidence as to why one of ordinary skill in the art with the primary reference (Appellants' Background) in front of him, which teaches a timer management program for managing a plurality of timers, would have been motivated to modify the primary reference (Appellants' Background) with the teachings of a secondary reference (Russell), which teaches a timer processing engine that supports multiple virtual minimum time timers, with the teachings of the other secondary reference (Kampe), which teaches managing upgrades in a high availability computer system by viewing the upgrade process as driving the system between a succession of stable configurations, with the teachings of the other secondary reference (Dorn), which teaches threading control. *See In re Lee*, 61 U.S.P.Q.2d 1430, 1433-1434 (Fed. Cir. 2002); *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000). Merely stating what a secondary reference teaches is not evidence for combining a primary reference (Appellants' Background) with the secondary references (Russell, Kampe and Dorn). *See Id.* Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claim 3. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

Further, as stated above, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Appellants' Background to have an application that performs the following operations on a timer via an API: creating a timer from an allocated block of system memory; activating the timer; and reinitializing the timer using the allocated block of system memory. *Id.* There is no suggestion in Appellants' Background of creating a timer from an allocated block of

system memory. Neither is there any suggestion in Appellants' Background of activating the timer. Neither is there any suggestion in Appellants' Background reinitializing the timer using the allocated block of system memory. Since the Examiner has not submitted objective evidence for modifying Appellants' Background to have an application that performs the following operations on a timer via an API: creating a timer from an allocated block of system memory; activating the timer; and reinitializing the timer using the allocated block of system memory, the Examiner has not presented a *prima facie* case of obviousness for rejecting claim 2. *Id.*

Further, as stated above, the Examiner must submit objective evidence and not rely on his own subjective opinion in support of modifying Appellants' Background to have an application that performs the following operations on a timer via an API: creating a timer from an allocated block of system memory; activating the timer; and wherein the timer expires and the timer services sends synchronously a time-out message to the application where the time-out message is sent using the allocated block of memory used to create the timer. *Id.* There is no suggestion in Appellants' Background of creating a timer from an allocated block of system memory. Neither is there any suggestion in Appellants' Background of activating the timer. Neither is there any suggestion in Appellants' Background of sending synchronously a time-out message to an application when a timer expires where the time-out message is sent using the block of memory allocated to create the timer. Since the Examiner has not submitted objective evidence for modifying Appellants' Background to have an application that performs the following operations on a timer via an API: creating a timer from an allocated block of system memory; activating the timer; and wherein the timer expires and the timer services sends synchronously a time-out message to the application where the time-out message is sent using the allocated block of memory used to create the timer, the Examiner has not presented a *prima facie* case of obviousness for rejecting claim 3. *Id.*

As a result of the foregoing, Appellants respectfully assert that the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 2-3. M.P.E.P. § 2143.

2. Appellants' Background, Russell, Kampe and Dorn, taken singly or in combination do not teach or suggest the following claim limitations.

Appellants respectfully assert that Appellants' Background, Russell, Kampe and Dorn, taken singly or in combination, do not teach or suggest "wherein said application performs the following operations on said timer via said API: creating said timer from an allocated block of said memory; activating said timer" as recited in claim 2 and similarly in claim 3. The Examiner cites column 8, lines 41-64, column 13, line 55 – column 15, line 12 of Dorn as teaching the above-identified limitations. Paper No. 12, page 8. Appellants respectfully traverse and assert that Dorn instead teaches timer slots to handle synchronous and asynchronous timers. The Examiner must provide a basis in fact and/or technical reasoning to support the assertion that timer slots of Dorn teach creating a timer from an allocated block of said memory. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). As the Examiner has not provided any objective evidence in support of the assertion that timer slots of Dorn teach creating a timer from an allocated block of said memory, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 2 and 3. M.P.E.P. § 2143.

Appellants further assert that Appellants' Background, Russell, Kampe and Dorn, taken singly or in combination, do not teach or suggest "reinitiating said timer using said allocated block of system memory" as recited in claim 2. The Examiner states that Dorn does not teach the above-cited claim limitation. Paper No. 12, page 8. However, the Examiner continues by asserting that Dorn teaches that the slot is reusable. Paper No. 12, page 8. Appellants assume that the Examiner is asserting

that since Dorn allegedly teaches that the slot is reusable that Dorn teaches reinitiating a timer using the allocated block of system memory used to create a timer. Appellants respectfully traverse such an assertion. The Examiner must provide a basis in fact and/or technical reasoning to support the assertion that reusable slots in Dorn teach reinitiating a timer using the allocated block of system memory used to create a timer. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). As the Examiner has not provided any objective evidence in support of the assertion that reusable slots in Dorn teach reinitiating a timer using the allocated block of system memory used to create a timer, the Examiner has not presented a *prima facie* case of obviousness for rejecting claim 2. M.P.E.P. § 2143.

Appellants further assert that Appellants' Background, Russell, Kampe and Dorn, taken singly or in combination, do not teach or suggest "wherein said timer expires and said timer services sends synchronously a time-out message to said application, wherein said time-out message is sent using said allocated block of system memory" as recited in claim 3. The Examiner cites column 14, lines 17-28 of Dorn as teaching a time-out message sent using the block of system memory allocated in creating the timer. Paper No. 12, page 8. Appellants respectfully traverse and assert that Dorn instead teaches that a timer will be instantiated by supplying a time after which it should expire and a callback function to be invoked upon timer expiration. Dorn further teaches that when the timer expires, it notifies the specified dispatcher to invoke the callback. While Dorn teaches notifying a dispatcher to invoke a callback upon expiration of the timer, there is no language in the cited passage that teaches sending a time-out message that uses the block of system memory allocated in creating the timer. Therefore, the Examiner has not presented a *prima facie* case of obviousness since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d. 1453, 1455 (Fed. Cir. 1998).

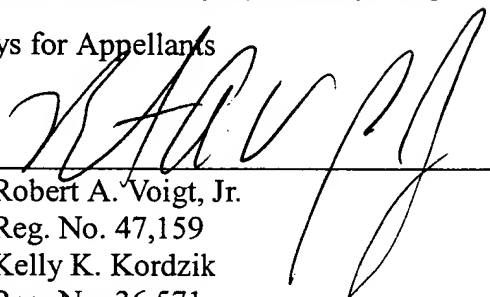
As a result of the foregoing, Appellants respectfully assert that there are numerous claim limitations not taught or suggested in the cited prior art, and thus the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 2-3 as being unpatentable over Appellants' Background in view of Russell and Kampe and in further view of Dorn. M.P.E.P. § 2143.

Respectfully submitted,

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